

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Central Illinois Public Service</b>	:	
<b>Company d/b/a AmerenCIPS</b>	:	
	:	
<b>Petition for a Certificate of Public</b>	:	<b>07-0532</b>
<b>Convenience and Necessity,</b>	:	
<b>pursuant to Section 8-406 of the</b>	:	
<b>Illinois Public Utilities Act, to</b>	:	
<b>construct, operate and maintain</b>	:	
<b>new 138,000 volt electric lines in</b>	:	
<b>Madison County, Illinois.</b>	:	

**ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On October 29, 2007, Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS") filed a Petition with the Illinois Commerce Commission ("Commission") for a Certificate of Public Convenience and Necessity ("Certificate") pursuant to Section 8-406 of the Public Utilities Act ("Act"), 220 ILCS 5/8-406, authorizing AmerenCIPS to construct, operate, and maintain two new 138 kilovolt ("kV") electric lines ("Transmission Lines") in Roxana, Illinois. The Transmission Lines, COP Sub Tap 1 –Primary ("Line 1") and COP Sub Tap 2 –Primary ("Line 2"), will connect the Wood River Refinery ("WRR") owned by WRB Refining, LLC ("WRB") (a wholly owned subsidiary of ConocoPhillips Corporation and EnCana Corporation) to the existing Illinois Power Company d/b/a AmerenIP Wood River-Roxford L1502 and AmerenCIPS Roxford-BOC transmission lines. AmerenCIPS also requested an order pursuant to Section 8-503, 220 ILCS 5/8-503, authorizing the construction of the Transmission Lines. Petitions for Leave to Intervene were filed by BP Products North America Inc., as successor in interest to American Oil Company and Amoco Oil Company, (jointly, "BP") and WRB.

Pursuant to due notice, this matter came on for a status hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on January 8, and March 11, 2008. An evidentiary hearing was held in this matter on May 22, 2008. Counsel on behalf of AmerenCIPS, WRB, and the Commission Staff ("Staff") entered appearances. Gary T. Brownfield, Rick D. Trelz, James N. Chapman II, Kenneth W. Lynn, and Thomas W. Girman submitted testimony on behalf of AmerenCIPS. Herman L. Seedorf submitted testimony on behalf of WRB. Greg Rockrohr, a Senior Electrical Engineer in the Engineering department of the

Energy Division testified on behalf of Staff. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

## **II. BACKGROUND**

AmerenCIPS is a public utility within the meaning of Section 3-105, 220 ILCS 5/3-105, is an electric utility within the meaning of Section 16-102, 220 ILCS 5/16-102, and is engaged in the business of supplying electric power and energy throughout its certified service territory within the State of Illinois. AmerenCIPS explained that the Transmission Lines are necessary for it to provide adequate, reliable, and efficient service to the WRR, which will increase its load demand starting in 2009, due to construction of additional facilities. The addition of a refining unit will raise the load demand of WRR beyond what the current services can provide. WRR has requested the Transmission Lines to meet the new load demand.

AmerenCIPS now seeks a Certificate to construct, operate and maintain the Transmission Lines to provide for WRR's increased load demand. The Transmission Lines will take the place of the seven 34.5 kV feeders that currently service the WRR from the Roxford Substation. Specifically, the Roxford Substation has three 138-34.5 kV transformers, and nine 34.5 kV feeders. Seven 34.5 kV feeders from the Roxford Substation presently serve the WRR. Four of those feeders also serve other customers in the area. The present electrical demand of the WRR is about 150 MW. The electrical demand of the facility will increase by about 90 MW for a total of 240 MW. The existing Roxford Substation and 34.5 kV feeders would not be able to support this proposed increase in load. As a result, WRB has proposed that a new customer-owned substation be built and supplied from the 138 kV Transmission Lines. The conversion of the WRR's service from 34kV to 138kV will provide the added benefit of strengthening the reliability of the distribution system in the surrounding areas of Hartford, Roxanna, and South Roxanna. AmerenCIPS proposed a primary and two alternate routes for each of the Transmission Lines. One Transmission Line, Line 2, will tap into the existing Roxford 1502 circuit. The other Transmission Line, Line 1, will be an extension of the existing 138 kV line presently serving BOC Gases. Both lines together will be approximately 4 miles in length.

In addition to the Transmission lines, WRB plans to improve the internal electrical system inside the WRR and plans two new substations to receive high voltage power from AmerenCIPS as well as a new high voltage loop inside WRR to connect the substations, significantly increasing the reliability of WRR's electrical facilities.

## **III. STATUTORY CRITERIA**

Section 8-406(b), 220 ILCS 5/8-406(b), requires that, in pertinent part:

The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable,

and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Section 8-503, 220 ILCS 5/8-503, requires in pertinent part that:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; ...

#### **IV. POSITIONS OF THE PARTIES**

##### **A. Section 8-406 Certificates**

##### **1. AmerenCIPS' Position**

AmerenCIPS witness Mr. Brownfield testified that the Transmission Lines are necessary to handle the increased electrical demand of the WRR. The increase in electrical demand is due to the construction of new facilities at the WRR, which will increase the demand from 140 MW to 240 MW, beyond the capacity of the current transmission lines. AmerenCIPS explained that the addition of the Transmission Lines is necessary to meet the WRR's increased demand because the existing Roxford 138-34.5 kV substation and the seven existing 34.5 kV feeders will not be able to provide adequate electric service to the increased electrical load. AmerenCIPS says it and the owners of the WRR have studied the possible conversion of the supply to 138 kV, and are convinced that the increase in the load justifies the migration to the higher voltage supply. According to AmerenCIPS, the use of 138 kV facilities to supply a load with an electrical demand of over 200 MW is consistent with good utility practice. AmerenCIPS says it considered various alternatives to provide the 138 kV supplies, and found the two supplies identified to be the least-cost approach.

AmerenCIPS also described how the conversion of the WRR service from 34.5 kV to 138 kV will improve the reliability of the distribution system in the surrounding areas. AmerenCIPS emphasizes that reliability is of vital importance to the WRR, as refinery processes are designed to function consistently at a steady state for the safest operation of the refinery. When the portions of the 34.5 kV circuits that currently serve the refinery are removed, the overall length of the circuits will be reduced. AmerenCIPS claims this will improve the reliability in and for the surrounding areas of Hartford, Roxanna, and South Roxanna, as well as for the WRR.

AmerenCIPS states that the proposed primary routes for the Transmission Lines were designed with input from and coordination with local government and state and federal agencies. AmerenCIPS claims that local government representatives supported the project. AmerenCIPS also determined that there do not appear to be significant environmental considerations that would preclude the primary proposed routes from being constructed, or from being selected as the preferred routes.

With respect to the proposed routes, AmerenCIPS asserts that an advantage of the proposed primary Line 1 route is that it parallels existing utilities in less congested areas, which will allow greater flexibility in placement of structures, thus reducing construction cost. Also, AmerenCIPS indicates that the majority of this route is on WRB's property so it impacts a fewer number of property owners than the second alternate. Furthermore, AmerenCIPS claims the primary route is the least cost route. According to AmerenCIPS, these advantages substantially outweigh the disadvantages of the primary route, which are that it has the largest number of major angle points, and it impacts more cropland than the first alternative route. AmerenCIPS states that because of the significant disadvantages of the two alternate routes, the primary route was selected as preferred.

AmerenCIPS further asserts that an advantage of the proposed primary Line 2 route is that it is mostly on WRB's property or on adjacent landowners' property that WRB has close business relationships with, giving the greatest possibility of successfully obtaining easements in a timely manner. Also, AmerenCIPS claims a landowner on the alternate routes has expressed some concern or reluctance to work towards finding a mutually agreeable route across its property. In AmerenCIPS' view, these advantages outweigh the disadvantages of the proposed primary route, which are: it is inside refinery property, which could slow construction by requiring a large number of guard structures to protect existing facilities. Because of landowner reluctance toward the alternate routes and the better likelihood of obtaining easements on the proposed primary route, as well as the other advantages, AmerenCIPS says the primary route was selected as preferred.

AmerenCIPS also stated that it is capable of efficiently managing and supervising construction of the proposed lines. AmerenCIPS indicates that its service territory and the territory of its affiliates, AmerenCILCO and AmerenIP, cover the southern two-thirds of Illinois. AmerenCIPS and its affiliates own, operate, and maintain hundreds of miles of transmission lines in the State. AmerenCIPS also

indicates that the Transmission Lines will be constructed in accordance with all applicable federal and state regulations and orders of the Commission, including 83 Ill. Admin. Code 305 and the National Electrical Safety Code.

AmerenCIPS claims that constructing the proposed Transmission Lines will not result in significant adverse financial consequences for AmerenCIPS or its customers because the project will be funded in its entirety by WRB. AmerenCIPS will bill in advance of construction for all projected costs, plus an additional amount to account for the taxable nature of such payments. AmerenCIPS states that WRB will provide progress payments before each stage of construction begins, and all payments will include tax gross-ups. AmerenCIPS indicates that the total estimated cost, including tax gross up, of the Transmission Lines and related facilities is approximately \$14.3 million. According to AmerenCIPS, at no point in time will there be any financial burden on AmerenCIPS, and therefore the construction will not have a significant adverse financial consequence for AmerenCIPS or its customers.

## **2. WRB's Position**

WRB states that its multi-billion dollar Coker and Refinery Expansion ("CORE") project will increase the WRR's capacity to 360,000 barrels of crude oil per day while increasing the number of employees and contractors in the refinery by 5 to 10%. WRB indicates that the CORE project will increase the WRR's power needs from 140 MW to approximately 240 MW. In addition, WRB states that once the CORE project is completed, WRB is considering a second phase of expansion which would further increase the WRR's capacity to 400,000 barrels of crude oil per day and increase the electrical demand to 300 MW.

WRB explains that a large portion of the initial 90 MW increase is associated with the construction of a coker refinery unit and its ancillary equipment. WRB says the load will come on in stages, beginning in 2009 and achieving full capacity in 2012. According to WRB, significant expenditures have already been made.

WRB asserts that the existing seven 34.5 kV feeders would not be able to provide adequate electric service to the increased electrical load and, without the proposed Transmission Lines, WRB would not be able to increase its capacity and therefore would not invest in the improvements. WRB states that it intends to spend over \$100 million to increase the reliability of its own electric distribution facilities inside the WRR. In addition to the Transmission Lines, WRB states that it is spending over \$100 million to improve the internal electrical system inside the WRR. WRB is planning two new substations to receive high voltage power from AmerenCIPS as well as a new high voltage loop inside the WRR to connect the substations, significantly increasing the reliability of the WRR's electrical facilities.

WRB contends that the reliability is of vital importance to its operations. WRB states that ConocoPhillips has thirteen refineries and the WRR has the largest electric demand of the refinery fleet. WRB witness Mr. Seedorf indicated he is not aware of

any other refinery that is served via wooden poles and such low voltage (34.5 kV) as is the case with the WRR.

WRB also contends that the refinery processes are designed to function consistently at steady state for the safest operation of the refinery. WRB alleges that abrupt changes in operating conditions, such as the changes associated with a total refinery electrical outage, create emergency conditions which force the refinery into an uncontrolled shutdown. WRB claims it can take a refinery 7 to 10 days to recover and restart after an uncontrolled shutdown. WRB says it has experienced five complete electrical failures and five major partial refinery electrical failures in the last ten years. According to WRB, the proposed Transmission Lines are necessary to provide adequate, reliable, and efficient service to AmerenCIPS' customers and are the least-cost means of satisfying the service needs of its customers.

WRB agrees that AmerenCIPS is capable of efficiently managing and supervising the construction process of the Transmission Lines. According to WRB, AmerenCIPS is also capable of financing the proposed construction without significant adverse financial consequences for AmerenCIPS or its customers. WRB states that the construction of the project, including the Transmission Line, will not have adverse financial consequences for AmerenCIPS or its customers because the total estimated cost of the project, approximately \$14.3 million, will be funded entirely by WRB. At no point, WRB asserts, will there be any financial burden on AmerenCIPS. Therefore, WRB believes that AmerenCIPS meets all of the requirements of Section 8-406 and should be granted a Certificate.

### **3. Staff's Position**

Staff witness Mr. Rockrohr describes his analysis relating to AmerenCIPS' request for a Certificate pursuant to Section 8-406. Mr. Rockrohr recommends that the Commission grant AmerenCIPS' request for a Certificate for the two Transmission Lines it proposes. He also agrees with AmerenCIPS' plan to modify its electric service to WRR from 34.5 kV to 138 kV. Mr. Rockrohr states that supplying the WRR at 138 kV would be more efficient, that delivery voltage at 138 kV will result in lower delivery service charges for the WRR, and that supplying the WRR with 138 kV lines that are dedicated to the WRR should result in more reliable service for both the WRR and other area customers.

Based upon his inspection of the areas and upon information provided by AmerenCIPS, Mr. Rockrohr indicates that he does not object to the routes AmerenCIPS selected for its proposed 138 kV Transmission Lines. Mr. Rockrohr adds that he has no reason to doubt AmerenCIPS' assertion that it is capable of efficiently managing and supervising the construction of the Transmission Lines it proposes to build. Mr. Rockrohr also explained that since WRB would pay AmerenCIPS' entire cost to install the two new 138 kV Transmission Lines, the project would not result in any significant adverse financial consequences for AmerenCIPS or its customers. Thus, Mr. Rockrohr

recommended that the Commission grant AmerenCIPS a Certificate for both Transmission Lines.

#### **4. Commission Conclusion**

The Commission has reviewed the positions of the parties and, based on the evidence, concludes that the Transmission Lines are necessary to provide adequate, reliable, and efficient service to the WRR. The Commission also believes that construction of the Transmission lines will improve reliability in the surrounding areas. The Commission also finds that the proposed routes constitute the least cost means of satisfying the service needs of AmerenCIPS' customers. The Commission further concludes that AmerenCIPS is capable of efficiently managing and supervising the Project's construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. Because WRB will pay AmerenCIPS' entire cost to install the two new 138 kV Transmission Lines, the Commission finds that AmerenCIPS is capable of financing the proposed construction without any significant adverse financial consequences for AmerenCIPS or its customers. Therefore, the Commission concludes that AmerenCIPS has shown that the Transmission Lines are in the public interest, that the criteria for issuing a Certificate under Section 8-406 have been met, and a Certificate should be issued to AmerenCIPS for the proposed Transmission Lines along their primary routes.

#### **B. Section 8-503 Order**

##### **1. AmerenCIPS' Position**

AmerenCIPS argues that it is necessary to modify its electric service to the WRR, and that a Certificate should be issued for the Transmission Lines. AmerenCIPS believes the Commission should find that the Transmission Lines are necessary and AmerenCIPS should be authorized under Section 8-503 to build them. AmerenCIPS notes that although Staff supports the issuance of a Commission order pursuant to Section 8-503 for Line 2, it opposes the issuance of a Section 8-503 order for Line 1. In AmerenCIPS' view, Staff's opposition to the issuance of a Section 8-503 order for Line 1 is misplaced because Staff misunderstands eminent domain authority as it relates to Section 8-503, and proposes an impractical solution.

Staff's opposition to granting AmerenCIPS an order under Section 8-503 for Line 1 is based on the conclusion that granting a Section 8-503 order would, by itself, amount to a grant of eminent domain authority to AmerenCIPS. According to AmerenCIPS, Staff is concerned that by seeking an order under Section 8-503, AmerenCIPS is in fact requesting eminent domain authority. AmerenCIPS, however, asserts that it is not seeking eminent domain authority in this proceeding and if negotiations with property owners are unsuccessful, then AmerenCIPS will, as appropriate, seek eminent domain authority from the Commission in a separate proceeding.

Moreover, AmerenCIPS argues, Staff's belief that the issuance of a Section 8-503 order is akin to granting eminent domain authority is incorrect. According to AmerenCIPS, even with a Section 8-503 order, a utility still must request and obtain Commission approval authorizing the use of eminent domain authority. AmerenCIPS says utilities seeking eminent domain authority must expressly request a grant of such authority pursuant to Section 8-509, either in conjunction with a petition seeking a Certificate or in a separate proceeding. AmerenCIPS argues that Illinois case law confirms that Commission approval is required before a utility seeks to condemn private property. According to AmerenCIPS, the exercise of eminent domain cannot occur until a utility expressly requests and receives Commission approval pursuant to Section 8-509, even if the utility already has a Section 8-503 order.

Furthermore, AmerenCIPS argues that a utility seeking eminent domain authority must show more than receipt of a Section 8-503 order. To obtain Commission approval, AmerenCIPS contends that the utility must also show that it has negotiated in good faith with the affected property owners and that the utility has diligently sought to acquire the necessary land rights. AmerenCIPS insists that the demonstration of good faith is distinct from the requirement that the utility show that construction is necessary because the two inquiries require different evidence. According to AmerenCIPS, the two requirements are separate from each other and can be conducted in separate proceedings.

AmerenCIPS argues that it may often make sense to consider eminent domain in a separate proceeding, due to the different evidence required. AmerenCIPS asserts that the inquiry under Sections 8-406 and 8-503 examines factors such as whether the public necessity requires the project and whether the utility is capable of financing and building it. AmerenCIPS claims the good faith negotiations inquiry, by contrast, focuses on the number and nature of contacts between the utility and landowners, whether the utility has explained the basis for the compensation offered to landowners, attempted to address the concerns of landowners, made comparable offers to landowners with similar circumstances, and the likelihood that further negotiations would prove useful in arriving at negotiated settlements. According to AmerenCIPS, Staff's recommendation that AmerenCIPS should have clearly requested in its petition an order pursuant to both Sections 8-503 and 8-509 simultaneously would require the Commission to revise its own longstanding practices, which distinguish between the two proceedings.

AmerenCIPS states that a supplemental requirement to the good faith inquiry is that a utility must show that condemnation authority will be necessary to obtain the desired properties. AmerenCIPS claims that in many Commission cases regarding eminent domain authority, the utility has, after obtaining a Section 8-406 Certificate or Section 8-503 order, identified specific parcels where eminent domain would be required and explained why negotiations for those parcels would not be successful. Before obtaining eminent domain authority, AmerenCIPS insists some showing that such authority is necessary for a specific property must be made.



Mr. Trelz testified that until the Commission grants a certificate, AmerenCIPS does not know what route it will be authorized to build, and so does not know for what parcels it may need eminent domain authority. Thus, it appears to him that under Staff's proposal, AmerenCIPS would have to seek eminent domain authority for all routes, primary and alternate, it proposes, as well as any intervener-proposed routes. Moreover, Mr. Trelz testified that under Staff's proposal, AmerenCIPS would have to enter negotiation with landowners on all those routes during the certificate proceeding, which could result in significant resources being spent to acquire options or other land rights on routes that ultimately will not be approved.

AmerenCIPS disputes Staff's concern that property owners would have lost their opportunity to present evidence in opposition to a line route once an order pursuant to Section 8-503 is entered. AmerenCIPS believes a property owner with a concern about a potential transmission line route would not wait until an eminent domain proceeding was filed to present evidence about the route; rather, such a property owner would present evidence about the route at the first opportunity, in a Certificate proceeding.

Moreover, AmerenCIPS argues property owners along AmerenCIPS' proposed route have already been given opportunities to express concerns regarding the line routing, both informally prior to this proceeding and formally during it. AmerenCIPS says it held a public informational workshop for landowners whose property was potentially affected by the line routes under consideration. In addition, AmerenCIPS states that all landowners along the primary routes were mailed a letter and "Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights of Way by Illinois Utilities" during the summer and fall of 2007. Finally, in accordance with 83 Ill. Adm. Code Section 200.150, AmerenCIPS indicates it provided the Commission with the names and addresses of all landowners whose property was crossed by the primary and alternate proposed routes in this proceeding. The Commission, on December 20, 2007, issued a formal notice of this proceeding to all of those affected landowners. In AmerenCIPS' view, affected landowners have had ample notice of this proceeding and an opportunity to present evidence regarding routing.

AmerenCIPS asserts that a separate eminent domain proceeding is beneficial because it would be limited to those parcels for which AmerenCIPS believes further negotiations are likely to be unsuccessful. In AmerenCIPS' view, it is not practical for a utility to determine what parcels will be needed for a route until a route has been selected and a Certificate has been granted. Therefore, AmerenCIPS suggests that it makes sense for a separate eminent domain proceeding to be undertaken once a route is selected and needed parcels are identified.

AmerenCIPS also refutes Staff's concern that landowners will be harmed by the grant of a Section 8-503 order in a proceeding separate from the grant of condemnation authority. According to AmerenCIPS, Staff believes that once a Section 8-503 order is issued, a landowner cannot effectively challenge a petition for eminent domain authority. However, AmerenCIPS claims that seeking a Section 8-503 order and eminent domain authority actually provides landowners multiple opportunities to

challenge a grant of eminent domain. AmerenCIPS says that since a Section 8-503 order is a prerequisite for eminent domain authority, including such a request in a Certificate petition under Section 8-406 alerts the landowner to the possibility of eminent domain, and allows a landowner to intervene with concerns about routing or other issues. AmerenCIPS also says the landowner can later challenge a petition for eminent domain authority before the Commission on the grounds that the utility has not negotiated in good faith. Finally, AmerenCIPS claims the landowner can contest the grant of eminent domain, as well as the valuation of the property, in the circuit court eminent domain proceeding. According to AmerenCIPS, the landowner has multiple opportunities to challenge a grant of eminent domain authority when it is obtained separately from a Section 8-503 order.

In addition to providing the landowner with multiple opportunities to challenge a grant of eminent domain authority, AmerenCIPS suggests that the landowner's ability to challenge the grant in a separate proceeding provides AmerenCIPS with a significant incentive to begin good faith negotiations sooner. AmerenCIPS contends that if it can successfully conclude good faith negotiations, it avoids the time and expense of seeking eminent domain approval in a second Commission proceeding, as well as the time and expense of a circuit court eminent domain proceeding. AmerenCIPS insists that its approach to seek a Section 8-406 Certificate and Section 8-503 order now, and then seek eminent domain authority later if necessary, is the right approach under the circumstances of this case.

## **2. Staff's Position**

Staff argues that the Commission should issue a Section 8-503 order for only one of the Transmission Lines. Staff witness Mr. Rockrohr testified that only one of the two transmission lines that AmerenCIPS proposes is necessary to satisfy the needs of its customers, and that AmerenCIPS proposes building the second 138 kV transmission line because WRB requested the second line merely for improved reliability. Mr. Rockrohr stated he knows of no reason for AmerenCIPS to request an order pursuant to Section 8-503 other than to obtain eminent domain authority to obtain property rights. Mr. Rockrohr further explained his understanding that if the Commission granted AmerenCIPS an order pursuant to Section 8-503 for both lines, then in practical terms the Commission would be granting eminent domain authority to AmerenCIPS to obtain the property rights necessary to build both lines.

Mr. Rockrohr believes that it would be reasonable for AmerenCIPS to construct both Transmission Lines as long as WRB pays for the second transmission line and constructing the second transmission line does not inconvenience area property owners. However, Mr. Rockrohr emphasized that AmerenCIPS should not receive eminent domain authority to construct facilities that are not necessary in order to provide adequate service to its customers. Staff argues that if AmerenCIPS cannot obtain the property rights necessary to build the second transmission line through negotiations with area landowners, then that transmission line should not be built. Therefore, Staff recommends that the Commission deny AmerenCIPS' request for an

order pursuant to Section 8-503 for the second 138 kV transmission line proposed for the route designated as primary Line 1.

Staff contends that the language in Section 8-509 leads to the conclusion that a separate proceeding to apply for eminent domain authority would be limited to making a determination as to whether the Commission has entered an order under Section 8-503. Staff claims that once such an order is obtained, then a petition for Section 8-509 eminent domain authority would simply need to reference the prior Commission order under Section 8-503. Under that scenario, Staff argues that it is not clear that landowners would understand the implication of the Section 8-503 proceeding until the second proceeding, under Section 8-509, was initiated. According to Staff, landowners who might participate in a proceeding if they believed eminent domain was an issue, may be unaware of the consequences of a Section 8-503 order, and thus choose not to participate in a Section 8-503 proceeding. Staff believes that the participation of landowners will help to assure the Commission has a full and complete record so it can make a fully-informed decision about the line route. Staff insists that landowners should have an opportunity to participate because their property rights are at issue.

Staff further argues that by requiring a utility to state in its petition that it is requesting Section 8-509 eminent domain authority, the Commission will remove any question as to whether the affected landowners understand the consequences of a Section 8-503 proceeding. Staff says the Commission should not assume that landowners are aware of the possibility that the utility will receive eminent domain authority as a result of a Section 8-503 proceeding. From Staff's perspective, it would be prudent to err on the side of adding transparency to the process in order to minimize the potential that interested parties are not aware of the issues at stake.

Staff also recommends that the Commission address how public utilities and common carriers should proceed when requesting an order pursuant to Section 8-503 and Section 8-509. Staff advocates that the Commission find that public utilities and common carriers should request relief under Sections 8-503 and 8-509 simultaneously in one docket. According to Staff, this would allow the public utility or common carrier, Staff, and any intervenors equal opportunity to address all the issues in one proceeding. Staff asserts that the reason for recommending that the Commission address Sections 8-503 and 8-509 simultaneously is to provide the landowners with the maximum opportunity to participate in the Commission proceedings because landowners are a valuable source of information regarding the line route itself and because landowners are in a unique position to be aware of not only their land, but the surrounding area and may be able to provide information necessary to have a full and complete record.

Staff argues that there is no statutory authority for the Commission to make a determination about good faith negotiations. Staff states that the reference in the Statement to the Commission determining whether the utility made reasonable attempts to acquire the property should not be interpreted in such a way as to affect the later

proceedings under the Eminent Domain Act. In Staff's view, the ultimate finding about good faith negotiations should be left to another forum.

Staff recommends that the Commission make a determination whether the utility made reasonable attempts to acquire the property. According to Staff, the Commission's order should avoid using the phrase "good faith" so that the Commission's order will not operate to estop the landowner from raising the good faith issue in a circuit court proceeding. Staff asserts that the determination about reasonable attempts to acquire the property should not be viewed as a review of whether the terms being negotiated are such that they are good faith negotiations. Rather, Staff insists that the determination about reasonable attempts to acquire the property is another method of assuring that the construction meets the "convenience to the public" requirement.

### **3. Commission Conclusion**

The parties disagree on only one issue and that is whether this Commission should issue an order pursuant to Section 8-503 for both, or only one, of the 138 kV transmission lines that AmerenCIPS proposes to construct.

Staff argues that only one of the two transmission lines that AmerenCIPS proposes is necessary to satisfy the needs of its customers and that AmerenCIPS proposes building the second because WRB requested the second line merely to improve reliability. Staff contends that there is no reason for AmerenCIPS to request an order pursuant to Section 8-503 other than to obtain eminent domain authority to obtain property rights. Furthermore, Staff argues that if the Commission issues an order pursuant to 8-503 for those lines, in any such future proceedings this Commission would be obligated to grant AmerenCIPS eminent domain authority for the transmission lines. Staff cites Section 8-509, which provides in relevant part:

When necessary for the construction of any alteration, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

According to Staff, a petition filed under Section 8-509 would simply need to reference the prior Commission order under Section 8-503. Staff's concern is that it is not clear that landowners would understand the implication of a Section 8-503 proceeding until the second proceeding, under a Section 8-509, was initiated. Landowners therefore would not be aware of the consequences, as Staff sees it, of a Section 8-503 order and therefore not participate in that proceeding.

Therefore, Staff asserts that it would be inappropriate for AmerenCIPS to receive eminent domain authority to build the transmission line on the route designated as Line 1. Staff recommends that this Commission deny AmerenCIPS request for an order pursuant to 8-503 for the secondary 138 kV transmission line proposed for this route.

Staff, in addition, advocates that this Commission find that public utilities and common carriers should request relief under Sections 8-503 and 8-509 simultaneously in one docket.

AmerenCIPS contends that it is not petitioning this Commission to receive eminent domain. Furthermore, AmerenCIPS argues that for this Commission to grant eminent domain authority, AmerenCIPS must show not just that an order under Section 8-503 order has been received but that the project is necessary and that AmerenCIPS has negotiated for rights-of-way with affected landowners in good faith. AmerenCIPS argues that its request is brought under Sections 8-406 and 8-503. In the event AmerenCIPS needs to receive eminent domain it will file a new petition under Section 8-509 only after unsuccessful negotiations, and expressly request eminent domain. Therefore, AmerenCIPS argues that the issuance of a Section 8-503 order does not by itself result in a grant of eminent domain authority. Moreover, AmerenCIPS argues that a Section 8-503 order is not the sole prerequisite for a grant of eminent domain authority.

AmerenCIPS argues that in this proceeding, it has shown that the Transmission Lines meet both the requirements of Section 8-406 and Section 8-503 and that Staff's argument that Line 1 is not necessary to supply the WRR is not supported by the record. AmerenCIPS argues that it has demonstrated that the Transmission Lines are necessary to provide adequate reliable and efficient service to the WRR and, equally importantly, will improve the reliability in and for the surrounding areas of Hartford, Roxanna, and South Roxanna. Both Transmission Lines are necessary for supplying the WRR and will in addition strengthen the reliability and efficiency of the distribution surrounding areas. Moreover, AmerenCIPS argues that the majority of Line 1 is on WRB's property, so it is unlikely that landowners would be inconvenienced by this route in any way.

This Commission agrees with Staff that it is important that landowners be given an opportunity to participate in an 8-406, 8-503 and 8-509 proceeding when their property rights are at issue; however, the Commission is of the opinion that AmerenCIPS has demonstrated that proper notice pursuant to Commission rules was given to landowners in regards to its request for a Section 8-406 Certificate in this proceeding. If landowners choose to participate in any phase of an 8-406, 8-503 and/or 8-509 proceeding they may do so. The Commission does not believe that a landowner will wait to make their interests known late in the proceedings particularly after receiving proper notice. Moreover, the statute does not require a utility company to request relief under Sections 8-406, 8-503 and 8-509 simultaneously.

Furthermore, this Commission does not agree with Staff's argument that issuing an order pursuant to 8-503 in essence guarantees eminent domain against landowners and further rejects Staff's argument that in a later 8-509 proceeding the utility company need only reference the prior Commission order under Section 8-503 to receive eminent domain. To the contrary, the Commission believes that an 8-503 order does not conclusively render a later 8-509 proceeding a mere formality in obtaining eminent

domain against property owners. First, nowhere under Section 8-503 does it contain language as to eminent domain and therefore, should not be inferred to include such language. Second, AmerenCIPS has not requested or made a showing for eminent domain authority. Furthermore, if it were AmerenCIPS intent to receive eminent domain, it must make this request under Section 8-509. At which time, AmerenCIPS must establish that proper negotiations have been made with landowners in addition to satisfying this Commission that the construction of facilities is necessary. To emphasize the above, this Order does not constitute a grant of eminent domain authority. This conclusion is consistent with the Commission's recent order in Docket No. 06-0706.

The Commission is of the opinion that the second line proposed by AmerenCIPS is not only necessary to satisfy the needs of its customers but also critical in improving reliability to its customers. For Staff to assert that the second line is to merely improve reliability is simplifying the matter. The Commission believes that precautions must be taken to protect the public in the event of a breakdown. Therefore, the Commission finds that AmerenCIPS has presented evidence establishing the Transmission Lines are necessary to provide adequate, reliable, and efficient service to the WRR, which will increase its load demand due to the construction of additional facilities.

The Commission also finds that AmerenCIPS has presented evidence establishing each of the requirements under section 8-503 for both lines. AmerenCIPS has demonstrated that the conversion of the WRR's service from 34kV to 138kV will provide the added benefit of strengthening the reliability of the distribution system and provide the additional load demand required for additional electric capacity and adequate, efficient and reliable service in the surrounding areas of Hartford, Roxanna, and South Roxanna.

The Commission agrees with Staff and AmerenCIPS that the 138 kV transmission lines that are proposed to supply the load additions at WRR will be financed in its entirety by WRB Refining, LLC, or its successor. Therefore, any order issued authorizing construction of the project shall include a condition that neither AmerenCIPS nor its customers will bear any of the project costs.

It is therefore the Commission's conclusion that an order pursuant to Section 8-503 be entered for both 138 kV transmission lines that AmerenCIPS proposes to construct.

## **V. FINDINGS AND ORDERING PARAGRAPHS**

Having given due consideration to the entire record, the Commission is of the opinion and finds that:

- (1) AmerenCIPS is an Illinois corporation and is a public utility within the meaning of the Act;

- (2) the Commission has jurisdiction over AmerenCIPS and the subject matter of this proceeding;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the evidence and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (4) AmerenCIPS proposes to construct, operate, and maintain two new 138 kV electric transmission lines together with related facilities, to provide adequate, efficient, and reliable service to the WRR;
- (5) the proposed construction, subject to any conditions found reasonable herein, will promote the public convenience and necessity; the record demonstrates that: (i) the proposed construction is necessary to provide adequate, reliable, and efficient service to AmerenCIPS' customers and is the least-cost means of satisfying the service needs of the customers; (ii) AmerenCIPS is capable of efficiently managing and supervising the construction process and have taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (iii) AmerenCIPS is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;
- (6) AmerenCIPS shall be granted, subject to any conditions described above, a Certificate authorizing the construction, operation, and maintenance of Line 1 (COP Sub Tap 1) along the primary route and Line 2 (COP Sub Tap 2) along the primary route, as shown on AmerenCIPS Exhibit 3.1 and legally described on AmerenCIPS Exhibits 3.1A and 3.1D;
- (7) AmerenCIPS shall be authorized to construct the project pursuant to Section 8-503; and
- (8) all motions, petitions, objections, and other matters in this proceeding which remain unresolved shall be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a Certificate of Public Convenience and Necessity shall be issued to Central Illinois Public Service Company d/b/a AmerenCIPS pursuant to Section 8-406 of the Public Utilities Act, and that said certificate shall read as follows:

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**IT IS HEREBY CERTIFIED** that the public convenience and necessity require (1) construction, operation, and maintenance by Central Illinois Public Service Company d/b/a AmerenCIPS of two 138 kV electric transmission lines over the routes found appropriate above and (2) the

transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that Central Illinois Public Service Company d/b/a AmerenCIPS is authorized to construct the project pursuant to Section 8-503 of the Public Utilities Act.

IT IS FURTHER ORDERED that Central Illinois Public Service Company d/b/a AmerenCIPS shall comply with all reporting requirements, conditions and other determinations set forth in this Order, and the authorizations granted in this Order are conditioned thereon.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 6th day of May, 2009.

(SIGNED) CHARLES E. BOX

Chairman